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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 CIMC RAFFLES OFFSHORE (SINGAPORE)
5 LIMITED and YANTAI CIMC RAFFLES
6 OFFSHORE LIMITED,

7 Petitioners,

8 v.

13 CV 52 (JSR)

9 SCHAHIN HOLDING S.A., SCHAHIN
10 ENGENHARIA S.A., SEA BISCUIT
11 INTERNATIONAL INC., BLACK GOLD
12 DRILLING LLC, BAERFIELD
13 DRILLING LLC, and SORATU
14 DRILLING LLC,

15 Respondents.

16 -----x

17 April 29, 2013
18 4:00 p.m.

19 Before:

20 HON. JED S. RAKOFF,

21 District Judge

22 APPEARANCES

23 DEBEVOISE & PLIMPTON
24 Attorneys for Petitioner

25 BY: JOSEPH P. MOODHE
NWAMAKA G. EJEBE

SCHULMAN BLACKWELL
Attorneys for Petitioner

BY: DAN J. SCHULMAN

MILBANK TWEED HADLEY & MCCLOY, LLP
Attorneys for Portigon, AG, New York Branch
BY: RACHEL PENSKI FISSELL

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APPEARANCES

SHEARMAN & STERLING, LLP

Attorneys for Interested party MS Drillship I, S.A.

BY: WILLIAM J.F. ROLL, III

LINKLATERS

Attorneys for Respondents Black Gold Drilling, Baerfield
Drilling and Soratu Drilling

BY: PATRICK ASHBY

SEWARD & KISSEL

Attorneys for Deutsche Bank Trust Company America

BY: DALE C. CHRISTENSEN, JR.

ROSS HOOPER

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(In open court, case called)

MR. SCHULMAN: Dan Schulman, Schulman Blackwell for petitioners CIMC RAffles. Together on my right are Joe Moodhe and Nwamaka Ejebe of Debevoise.

MR. ASHBY: Good afternoon, your Honor, Patrick Ashby with Linklaters on behalf of respondents Black Gold, Baerfield Drilling, LLC and Soratu Drilling LLC, in addition on behalf of interested third parties Airosauru Drilling, LLC, Dleif Drilling, LLC, Turasoria, SA, LLC, Deep Black Drilling, LLC, and Schahin Petroleum & Gas, SA.

THE COURT: Glad you have something to read that list from.

MS. PENSKI FISSELL: Rachel Penski Fissell from Milbank on behalf of interested party Portigon AG, New York Branch as administrative agent for the senior secured lenders.

MR. ROLL: Good afternoon, your Honor, William Roll of Shearman & Sterling for MS Drillship I, SA, which is a subordinated secured lender.

MR. CHRISTENSEN: Dale Christensen, Seward & Kissel, counsel for Deutsche Bank Trust Company.

THE COURT: Thank you for being here.

So on April 18 this Court heard argument regarding the various relief sought by petitioners and various objections from interested third parties. And because petitioner's counsel had indicated some frustration with the amount of time

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1 that petitioners have sought to make good on their judgments,
2 the Court indicated that it would decide this dispute by the
3 end of the month, namely tomorrow.

4 But that apparently wasn't good enough for
5 Mr. Schulman, who went ahead last Thursday and filed a bunch of
6 new restraining orders and, according at least to his
7 adversary, refused to advise Deutsche Bank as to the scope of
8 those restraining orders, forcing them, as a protective
9 measure, to take a broad view of them, thus placing --
10 according to the objectors, placing in jeopardy certain
11 Waterfall payments that are due to take place tomorrow.

12 I am sure Mr. Schulman has an explanation for this,
13 because on its face it looks very unfortunate.

14 MR. SCHULMAN: Your Honor --

15 THE COURT: Yes.

16 MR. SCHULMAN: On April 4th, not April 18th
17 restraining notices were served on Deutsche Bank. That
18 restraining notice is annexed to the CMIC's papers and annexed
19 to our papers. It's our Exhibit B, I believe, and it's an
20 exhibit to Schahin's papers. This restraining notice, signed
21 by co-counsel, the other restraining notice was signed by me,
22 simply restrains assets in which judgment debtors hold an
23 interest.

24 THE COURT: Well, Linklaters, for example, in their
25 letter of April 26 says that Deutsche Bank's counsel informed

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1 us that Deutsche Bank would continue to block accounts of
2 entities other than the respondents unless and until it
3 received either a clarification of the scope of the restraining
4 notice from your client, CIMC, or else upon an order of the
5 Court. So did you give them that clarification?

6 MR. SCHULMAN: Absolutely, your Honor.

7 THE COURT: When?

8 MR. SCHULMAN: We had a discussion with Mr. --

9 THE COURT: When?

10 MR. SCHULMAN: The very next day, it was Thursday and
11 then Friday, the 24th and 25th. So we --

12 THE COURT: This is dated April 26, this letter to me.

13 MR. SCHULMAN: Correct, it was April 26th that we
14 spoke with them.

15 On April 25th we got a call and we got a letter saying
16 that this restraining notice, which is Exhibit A to Schahin's
17 papers, this April 4th restraining notice, Deutsche Bank claims
18 that this -- they think it's vague.

19 Your Honor, the restraining notice is very clear, it
20 quotes the exact language of CPLR 5222(b), it says you are
21 forbidden any sale or interference with any property in which
22 Black Gold, BDL or SDL has an interest. It doesn't talk about
23 any other entity.

24 We got a call from Mr. Ashby. Mr. Moodhe, to my
25 right, said to Mr. Ashby this restraining notice is solely as

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1 to those three entities. We don't know if these three entities
2 control any other accounts at Deutsche Bank. However, Deutsche
3 Bank asked us in our restraining notice -- it references 40
4 bank accounts, we were asked by Deutsche Bank what are the 40
5 bank accounts that you know about, approximately 40. And we
6 wrote back, annexed to our papers, here's the list of the 40
7 bank account numbers that we know about. These were BDL, Black
8 Gold and SDL account numbers. Mr. Ashby said to us, you are
9 clearly not trying to restraining anything else. And our
10 response is unless Black Gold, BDL or SDL control those
11 accounts --

12 THE COURT: How would Deutsche Bank know?

13 MR. SCHULMAN: Because they're their banker and they
14 are the banker not only for this transaction --

15 THE COURT: Do you know which those are?

16 MR. SCHULMAN: We have no idea.

17 THE COURT: So you're saying your restraining order
18 imposed on them some sort of investigative requirement?

19 MR. SCHULMAN: Your Honor, as I understand, CPLR
20 5222(b), if they know or have reason to believe that judgment
21 debtors own or control these accounts, and they can know that
22 they might control it either because they have issued
23 instructions about it or they received funds from it or what
24 have you that, that constitutes a restraint. We would have no
25 idea whether that was the case.

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1 So Mr. Moodhe said to Mr. Ashby we're happy to tell
2 Deutsche Bank's counsel that, as far as we're concerned, this
3 relates to the three judgment debtors, and if there are other
4 accounts in which they have control, we don't know anything
5 about it. We don't know of any other accounts of which these
6 judgment debtors have control. That's what we say in our
7 letter.

8 Mr. Ashby said fine, let's call Deutsche Bank's
9 counsel. We called Mr. Deutsche Bank's counsel,
10 Mr. Christensen, who was not satisfied with that.

11 Our response is we have not taken discovery, we don't
12 know what control, if any, BDL, SDL, and Black Gold have over
13 these other accounts. We don't know they restrained them.
14 This is a motion seeking clarification of an April 4th
15 restraining notice. It's not April 18th, it was an April 4th
16 restraining notice. We have no idea why Deutsche Bank
17 restrained these other accounts.

18 Now we have speculation. Our speculation is either
19 Deutsche Bank has information that these accounts have been
20 controlled by Black Gold, BDL and SDL, or maybe Deutsche Bank
21 has chosen, since they know of these other judgments, that
22 they're restraining these accounts because these other entities
23 make payments to Schahin Engenharia, several of them do, but we
24 don't know why it was done.

25 So your Honor --

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1 THE COURT: I hear what you're saying. Let me hear
2 from counsel for Deutsche Bank.

3 MR. CHRISTENSEN: Your Honor, is this an appropriate
4 place for me to speak from?

5 THE COURT: That's fine.

6 MR. CHRISTENSEN: When we were confronted with the
7 notice restraining these accounts of the judgment debtor, we
8 were concerned, and I have to say concerned about what we
9 thought was the scope and the possible reach of those. And we
10 indicated to both counsel for the judgment debtors and counsel
11 for creditors that we were going to err on the side of caution
12 in terms of restraining these accounts.

13 We urged them, frankly, to see if they could help us
14 make some definitions as to what would be appropriate in terms
15 of enforcement of the judgment, and --

16 THE COURT: Well, they're saying that they told you
17 that there were certain specified entities and that's all they
18 were seeking to restrain except there were accounts controlled
19 by those entities, and they wouldn't know that but you would,
20 as I understand petitioner's counsel to say.

21 MR. CHRISTENSEN: We certainly know what accounts are
22 denominated in the names of the judgment debtors. And I may
23 not have the exact correct amount, I think there's about 18
24 million in those accounts.

25 In terms of the interrelationship of these judgment

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1 debtors with any of the other entities that Mr. Schahin may be
2 involved in, and there's many, many of these, that from our
3 perspective, as laid out in Mr. Ashby's papers, have no direct
4 relationship to the project financing here, but we don't know
5 what the relationship may be in terms of any interest in these
6 accounts, which is what I think the reference to the CPLR
7 5222(b) causes some pause.

8 So we asked to see some clarification of this,
9 frankly, the submission of papers on this. We understood also,
10 as your Honor indicated at the outset, that your Honor was
11 prepared to rule by the end of the month on this. We thought
12 that would give some clarity to the situation. But frankly, we
13 were not able to get any kind of movement from the judgment
14 creditors on allowing any assets that may be related to
15 Mr. Schahin but may or may not be related to these judgment
16 debtors to be released or dispensed with. So that was our
17 predicament.

18 We are trying to educate ourselves as time goes on,
19 including by the submissions that the parties have made, both
20 of whom, particularly the judgment debtors, know a lot more
21 about these transactions than we do. And that's about all I
22 could say. We erred on the side of caution. We did not want
23 to get involved in some kind of dispute between these parties,
24 but we obviously are here and are now involved.

25 So that's about all I could say.

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1 THE COURT: Well, it's a pleasure to have you here.

2 Let me hear from counsel for the third parties and
3 then we'll come back to petitioner's counsel.

4 MR. ASHBY: Good afternoon, your Honor. I think I
5 could be relatively brief because the issues have pretty much
6 been tee'd up already.

7 I guess the one thing I might add is I take a bit of
8 umbrage with the suggestion from Mr. Schulman that he is
9 somehow an innocent party standing by and we should be taking
10 this up with our bank. In particular I learned for the first
11 time from their submission, which is attached to it as
12 Exhibit D, private correspondence that Mr. Schulman was having
13 with in-house counsel at Deutsche Bank. It seems from the
14 email that was exerpted here that Deutsche Bank was seeking
15 clarification as to what exactly these approximately 40
16 accounts were. Mr. Schulman responded, it appears, with the
17 account numbers for the entities, Black Gold, BDL and SDL.

18 But then Mr. Schulman goes further, and you will see
19 that he adds in here, and I quote, that these are other things
20 that Deutsche Bank should know about, quote, unquote, and as
21 lead bank for three facility agreements involving Casablanca
22 International, also two credit agreements involving Black Gold
23 Drilling, agent bank for project finance transactions for Deep
24 Black Drilling. I think what this email shows, your Honor, is
25 that Mr. Schulman actually injects into the conversation with

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1 Deutsche Bank entities that he had no good faith basis to
2 believe that were related to BDL or SDL, namely Casablanca and
3 Deep Black Drilling.

4 So I think this is part and parcel of what has been
5 happening on CIMC's side to overall muddy the waters, make
6 Deutsche Bank feel uncomfortable, and therefore encumber far
7 more assets than it should be encumbering. And that's why we
8 have come before your Honor today to seek clarification.

9 THE COURT: Well, of course you will get my ruling
10 tomorrow. What strikes me about this little subset of a
11 dispute is precisely what has bothered me about this matter
12 from day one. On the one hand, the petitioners seem intent on
13 attaching everything in sight without much basis beyond
14 speculation in certain instances. On the other hand, your
15 client and the clients in the other third parties keep waving
16 the argument of the world is going to come to an end because
17 the ships won't sail at all like that, an argument that seems
18 to be raised at every opportunity, such as the proverbial
19 bloody shirt was waved after the civil war. I don't find, to
20 be candid, either side's argument particularly persuasive, but
21 let me hear from Mr. Schulman.

22 MR. SCHULMAN: Your Honor, there's \$70.7 million
23 judgment from your Honor. As far as I can tell, we haven't
24 seized anything yet.

25 THE COURT: Well, your adversary says -- counsel for

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1 Deutsche Bank says you've got at a minimum 18 million.

2 MR. SCHULMAN: I believe that 18 million is all
3 money -- and I'm sure defense counsel is going to say that that
4 is all money that goes to the senior lender. I don't know, but
5 it seems a fair -- assuming they did their job right, that
6 would normally be the conclusion.

7 We don't have a single penny. All we have is the
8 possibility of seizing funds that expressly go outside the
9 security agreement. The security agreements, the collateral
10 agreement says I think 3.07, that if monies are paid to
11 somebody other than an obligor, that would be Schahin
12 Engenharia or Schahin Holding, that those funds no longer have
13 any security interest.

14 In terms of this, we served on its face, I can read
15 it, it's one paragraph, on April 4th, the restraining notice,
16 for BDL, SDL, Black Gold, saying these are the three entities.
17 Now that Exhibit 4 -- Exhibit D has the same reference.

18 THE COURT: So the difficulty is this, in as near as I
19 can tell, from the little bit before this Court, Mr. Schahin
20 has one of these very complicated set of companies in which he
21 is, to one extent or another, involved.

22 Indeed, a cynic might draw the inference by the sheer
23 proliferation of identities involved that he was trying to
24 create a situation where he could evade judgment creditors.
25 But on the other hand, that may be very unfair, it may be more

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1 a function of the way his business operates in its various
2 manifestations.

3 But while you're not in a position to know at this
4 stage whether the particular entities against which you hold
5 judgments are controlled or simply you have some relationship
6 to other entities or no relationship at all, is not clear to me
7 that Deutsche Bank is in a position to know that either.

8 MR. SCHULMAN: Your Honor, I didn't mean to interrupt.

9 THE COURT: Go ahead.

10 MR. SCHULMAN: Deutsche Bank apparently is the banker
11 on the Deep Black project finance deals which involves the
12 Turasoria 10,000. The Turasoria 10,000, by the way, is
13 operated by Schahin Engenharia and is paid operating expenses,
14 we presume. It's the depository bank or otherwise has some
15 involvement with Dleif Drilling, we're told another Schahin
16 entity. They're the banker there. They're the banker relating
17 to Black Salt Drilling. They're the bank for all of these
18 various Schahin entities in some capacity or another, we don't
19 know what capacity.

20 So when we were asked -- on December 4th Debevoise
21 served Deutsche Bank with a restraining notice, got back the
22 letter from Shelby Stern at Deutsche Bank -- a call actually,
23 too, saying: Can you tell us what the account numbers are.
24 Because you mentioned in there BDL, SDL and Black Gold and
25 there's about 40 account numbers. We said there's

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1 approximately 40 account numbers that we're aware of.

2 So we wrote back, and the email is very clear, I
3 happened to write it, and I said here's the account numbers we
4 know about. And the reason I wrote is because I wasn't allowed
5 to give it to Debevoise because it was attorneys' eyes only and
6 I didn't want attorneys in the state court to see it.

7 I was very careful. I didn't want accounts that
8 Deutsche Bank knew were controlled by these other entities and
9 how would they know that? Because they get directions: Pay
10 money from this account to Black Gold, pay money to BDL. I
11 don't know if that's happening or not. Deutsche Bank knows for
12 sure. They're that bank.

13 Your Honor, let me step back for a second literally
14 and figuratively. There's a million and a half cases filed in
15 the state court in New York, civil cases, four and a half
16 million total cases every year. About 50,000 go to judgment.
17 And there's probably who knows, 300, 700,000 restraining
18 notices served every year. Isn't it curious that counsel here
19 couldn't find cases in which it's absolutely clear, restraining
20 notice which said to these three entities. There's almost no
21 cases on it? Why? Banks know how to look at these things.
22 They look at the accounts. Whose name is there, first thing.
23 And I will confess I spent eight years at the Bank of New York,
24 so I actually had some responsibilities in that regard. Whose
25 name is it in? Two, big enough, they might want to look at the

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1 accounts a little more carefully. Does anyone have control?
2 Is BDL saying pay me every month from that account? How do we
3 know that? Not hard to figure out, especially when all the
4 money is in New York at least, can be wired to Brazil.

5 So control. Are you using the accounts? Do you
6 control the accounts? Really easy to do that as a bank. They
7 have lots of computers and do this for a living. Banks never
8 complained to have a problem. Not once, not once in all that
9 muck that is being thrown at us saying we did something wrong
10 is there a single word in this restraining notice that is said
11 to be incorrect, invalid, improper or unclear. It's basically
12 four lines long. We think you have property, we know you have
13 about 40 bank accounts. Any property that these three entities
14 own are restrained, and we quoted -- co-counsel quoted 5222(b).

15 It seems to me that is this is really kind of the
16 chutzpah. You have an entity which owes the money, says we
17 have the money, lift the \$40 million restraint on these
18 accounts because we're going to pay it, and then they go ahead
19 and say oh, you shouldn't have served a restraining notice.
20 Your Honor, why can't you serve a restraining notice on
21 April 4th, as it happened, dated April 3, and that's what is
22 annexed to their papers, and where in this restraining notice
23 is it anywhere unclear? How would we know? We don't have
24 discovery. This case is all over the place. No, you don't
25 have it put the account number, that's not your requirement as

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1 the judgment creditor. Who would know? Judgment debtor has a
2 relationship with this bank. That's not our problem.

3 THE COURT: Excuse me.

4 MR. SCHULMAN: Sorry, your Honor.

5 THE COURT: I understand your point, although I think
6 this is probably the first time in history that Deutsche Bank
7 has been accused of chutzpah.

8 In any event, let me hear from counsel from Deutsche
9 Bank again.

10 MR. CHRISTENSEN: Your Honor, I just want to put some
11 clarity on one point that's been suggested by counsel for the
12 judgment creditors here, and that is speaking of Deutsche Bank
13 as a single entity.

14 The entity that was served with the restraining notice
15 that is at issue is Deutsche Bank Trust Company of America,
16 which is located here. They have banks that are separate
17 throughout the world. There is a separate Deutsche Bank entity
18 in Brazil that is involved with this. We have tried to reach
19 out to err, as I said, on the side of caution at the outset of
20 this while we're trying to learn what the situation is both
21 internally and also from the benefit of the exchange of
22 submissions by the different parties as to what the legal
23 rights of the different parties are with respect to these
24 accounts. That's all that we have done.

25 We have been criticized for erring too broadly on this

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1 and putting some problems with some of the project finance
2 deals that do not relate to the judgment debtors, but we are
3 not currently in the position to know with any kind of
4 certainty that these are accounts that don't have any
5 possession or custody interest of any of the Schahin entities
6 that are judgment debtors here. It's just not something that
7 we can do at this point in time. So we erred on the side of
8 caution, and that's all I could say. But I do want to make the
9 point that when we speak loosely of Deutsche Bank, it's a major
10 corporation with a lot of different separate corporate
11 entities, and some of those entities are applicable here.

12 THE COURT: Does any other counsel want to be heard?

13 MS. PENSKI FISSELL: Very briefly.

14 So I just want it clarify that the \$18 million that
15 was referenced in the accounts that are restrained, those are
16 accounts that my clients have a superior security interest in,
17 and so --

18 THE COURT: So you should be delighted they're being
19 tied up. They're doing your job for them.

20 MS. PENSKI FISSELL: Well, I think it goes to the
21 letter we sent on Saturday night that these restraining notices
22 are -- now since we were before you on April 18, they have now
23 served not only the administrative agent but also started
24 serving the senior lenders. We're aware of at least four
25 restraining letters on senior lenders individually. And

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1 there's a lot of complex legal and factual questions that arise
2 from these restraining notices, including whether the issue of
3 control alone of an account is sufficient to make a restraining
4 notice effective. And we just think all of these restraining
5 notices piling on, it's best to just vacate them and proceed
6 more slowly with discovery and a more orderly process to
7 prevent all the chaos.

8 THE COURT: Well, of course none of these entities
9 whose accounts are being restrained has chosen to appear and
10 object. You're objecting because you have got a third party
11 interest, and I appreciate that. You certainly have standing,
12 no one questions that, but it is notable that the people who
13 would have the most knowledge and the most direct interest
14 have, throughout this litigation, chosen not to appear, at
15 least for any meaningful purpose. So default judgments have
16 been entered and so forth, I don't mean to overstate, there has
17 been some modest appearance, but the normal way, if someone was
18 wrongly restrained, the normal person would come in and say
19 stop it. This is a person whose account was restrained.
20 They're not doing that.

21 I see, and I am glad that Mr. Schulman clarified for
22 me, the fact that these were actually -- these notices were
23 served, as I understand, on April 4th, and I had been under a
24 misconception that they were served much more recently. But
25 here it is now April 29th and they haven't appeared and said

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1 please, we have nothing to do with the entities against whom
2 the judgments have been imposed, please lift the restraint.

3 And you're not in a position to know better either.
4 You're hypothesizing, just as plaintiff's counsel is, but in
5 the opposite direction. You're hypothesizing that there's no
6 connection. He's saying in effect well, there might be, so we
7 leave it to the bank to figure it out. No one here has
8 knowledge. Conceivably Deutsche Bank has some knowledge, but
9 the persons who have knowledge for sure are the entities who
10 have chosen not to appear.

11 MS. PENSKI FISSELL: My only point is third parties
12 are getting harmed. Currently accounts that are used to pay
13 principal and interest payments to our clients are being tied
14 up and frozen right now. And potentially, depending on the
15 outcome of this, additional projects with other third party
16 secured lenders, their principal and interest payments will be
17 tied up.

18 THE COURT: Unless I have misunderstood, the extent --
19 no one is making a claim that any of this money that's being
20 tied up that is your money should be paid to anyone but you.
21 Your fear has been that the net result of all this will be that
22 the underlying operations will cease and there will be no more
23 waterfalls. And I have to say I'm a little skeptical of that.
24 It hasn't happened yet. It is a nice -- I mean the judgment
25 debtors must be licking their chops, so to speak, because they

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1 have gotten two different groups of creditors to fight among
2 themselves, all because of the fear that oh, my gosh, the whole
3 thing may come to a grinding halt. But it hasn't come to a
4 grinding halt, and I'm not sure that I have seen any real
5 evidence to suggest it will come to a grinding halt other than
6 speculation.

7 MS. PENSKI FISSELL: That was the subject of our
8 motion. If you want me to retread --

9 THE COURT: No, you're going to get an order tomorrow.
10 But let me hear from other counsel.

11 MR. SCHULMAN: Your Honor, for clarification, the
12 restraining notice that they're complaining about was dated
13 April 3rd and issued April 4th. There were some subsequent
14 restraining notices that were issued, but the one that's of
15 issue of moment is the April 3 served April 4.

16 THE COURT: In an excess of caution, can I get your
17 assurance that no more restraining orders will be served
18 between now and when I issue my order tomorrow?

19 MR. SCHULMAN: Absolutely, your Honor.

20 THE COURT: Thank you.

21 MR. ROLL: Thank you, your Honor. William Roll for
22 interested party MS Drillship I, SA, which, as your Honor knows
23 from the last time, is the subordinated secured lender here.
24 And the dialogue that your Honor just had with Mr. Schulman is
25 a good segue to what I wanted to get into, because I want to

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1 talk about some restraining notices served not on April 4th but
2 on April 25th and April 26th, last Thursday and last Friday,
3 well after our appearance here in front of your Honor on
4 April 18.

5 And they were not served on Deutsche Bank, they were
6 not served on any other bank of these judgment debtors, they
7 were not served on MS Drillship I, the subordinated secured
8 lender, they were attempted to be served on Mitsubishi
9 Corporation, the Japanese parent. And they were --
10 Mr. Schulman sought to serve those first Thursday through
11 Mitsubishi Corporation America, a totally unrelated subsidiary,
12 unrelated to this deal and unrelated to this financing. He was
13 told by that entity that that service was improper.

14 The next day, Friday, he attempted to serve those
15 through Shearman & Sterling because we have appeared here on
16 behalf of MS Drillship I. He was told at that time, I told
17 Mr. Schulman in writing, that that service was improper. I
18 don't mean to give him a hard time about the service, I suspect
19 he could find a way to serve the entity in Japan eventually,
20 but my point is, to the point you heard from counsel, the
21 proliferation of these restraining notices has to stop,
22 especially since we have been here in front of your Honor
23 attempting to sort this out.

24 In our case -- I shouldn't say our case, in the case
25 of the Mitsubishi Corporation, it's not even a party here, it's

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1 not a lender here, it's not even in the United States. It is
2 clear and should be clear that we do not hold property and
3 assets of these judgment debtors. And it seems to us, and this
4 is my speculation, I will offer it for what it's worth, it
5 seems that that kind of effort, an effort to serve that
6 particular entity with this kind of restraining notice in the
7 face of all that has gone on here is simply an effort to get us
8 to pressure -- to get our client the pressure these judgment
9 debtors to pay the judgment. I think that's inappropriate.

10 THE COURT: All right. Let me hear just on that point
11 from Mr. Schulman and then I will hear from other counsel.

12 MR. SCHULMAN: Your Honor, counsel and co-counsel did
13 serve additional restraining notices on any entities that we
14 believe might have banking relationships with the judgment
15 debtors. We don't know which entities do. And this is typical
16 practice, you serve the banks. In fact, typically they serve
17 20 banks or 30 banks.

18 THE COURT: It bothers me that when there was a major
19 dispute brought before me that comes down to whether the
20 actions you were taking were warranted or not, and I, largely
21 to accommodate you, had indicated the Court would resolve what
22 involves some interesting and difficult legal issues on an
23 expedited basis, namely by tomorrow, that you would go ahead
24 and, instead of waiting for that order, continue to file these
25 restraining orders. That's what I said at the outset this

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1 afternoon, then I thought I had to restrain myself because of
2 what you were saying, but now I hear there is something on both
3 sides of that coin.

4 MR. SCHULMAN: I think there are probably 15 or 20
5 restraining notices that counsel and co-counsel served on
6 various entities, and why they weren't all done at once is
7 frankly just administrative lethargy.

8 THE COURT: So how do you justify this restraint on
9 Mitsubishi?

10 MR. SCHULMAN: Your Honor, if Mitsubishi doesn't have
11 any assets and no accounts, and they wrote back saying there's
12 no accounts, and then it's not a restraint. Quite simply, we
13 thought there was.

14 THE COURT: What was your basis for thinking they did?

15 MR. SCHULMAN: Basically, we reviewed Moody's reports,
16 Fitz ratings reports, every report could find that is publicly
17 available that -- Schahin Engenharia's financials filed,
18 anything that listed entities with which they had financial
19 dealings, the Schahin entities' financial dealings. And that's
20 where you get a list of 20 entities. We didn't do it to every
21 single bank in New York, we did it to entities that we believed
22 had financial dealing. Evidently Mitsubishi was the wrong
23 Mitsubishi. We apologize to them. I thought it was served on
24 the Bank of Tokyo Mitsubishi, apparently it was served on
25 Mitsubishi Corporation. That was an error that wasn't

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1 intended.

2 I would like to make one point then I will sit down.

3 THE COURT: Go ahead.

4 MR. SCHULMAN: I would like to quote one sentence from
5 the Schahin brief, "For the avoidance of doubt, we do not
6 question Deutsche Bank's conduct." It seems to me either
7 Deutsche Bank had a basis to believe that the accounts were
8 related to BDL, SDL or Black Gold or they don't. If they
9 don't, they should be questioning their conduct. If they do,
10 what they did was entirely appropriate. All we're getting is
11 claims. The only entities that know anything about this are
12 Deutsche Bank --

13 THE COURT: It's not so clear to me it's an either/or
14 situation, and many times there are relationships that don't
15 amount to control.

16 But I understand what you're saying. Let me hear from
17 remaining counsel and then we'll see where we stand.

18 MR. SCHULMAN: My suggestion, your Honor, is neither
19 you nor I have any evidence before us that could clarify this
20 restraining notice of April 4th. We have no evidence before
21 us. We don't know what kind of control there is before us or
22 not. So seeking clarification from the Court when they say
23 Deutsche Bank did nothing wrong, how can you clarify something
24 that is absolutely clear on its face? We restrained property
25 interest of BDL, SDL and Black Gold.

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1 THE COURT: All right.

2 MR. SCHULMAN: Thank you, your Honor.

3 THE COURT: Thank you.

4 MR. ASHBY: Your Honor, I would like to address a few
5 points that were raised. First, I apologize if this is my
6 fault for not being clear, but there was a suggestion made that
7 the parties that are being improperly restrained are somehow
8 not here today. I don't believe that's the case, your Honor.
9 When I went through my litany of people I was standing up for
10 today, included amongst them were Airosauru Drilling, LLC,
11 Dleif Drilling, LLC, Turasoria Drilling, SA, LLC, Deep Black
12 Drilling, LLC, and Schahin Petroleum & Gas, SA. Each one of
13 these entities has accounts at Deutsche Bank that now is being
14 restrained, and that is improper. That's why they have
15 appeared today. As we set forth in our briefing, the drillship
16 Lancer is held by Turasoria, LLC, the drillship Victoria is
17 held by Deep Black, LLP, the drillship --

18 THE COURT: Are these the entirety of all the accounts
19 that are being restrained by Deutsche Bank at present other
20 than direct accounts of the judgment debtors?

21 MR. ASHBY: To the best of my knowledge, yes, your
22 Honor.

23 THE COURT: Then the fault is mine, I misunderstood.
24 I didn't realize that was the entirety, because there were
25 larger numbers thrown around, 40 accounts or whatever. So

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1 you're in a position, then, to show that these are not
2 controlled in any way by any of the judgment debtors. True?

3 MR. ASHBY: That is correct, your Honor.

4 THE COURT: How would you propose to show that?

5 MR. ASHBY: I think that the affidavit that we put
6 forward in support of our brief from Gustavo Shinohara, he's
7 the director of project finance, and he put forward an
8 affidavit setting forth these entities and saying that BDL, SDL
9 and Black Gold do not have an interest in these accounts.

10 THE COURT: So when you showed that to Deutsche Bank,
11 what was their response?

12 MR. ASHBY: Deutsche Bank just saw our affidavit on
13 this -- I guess on Friday evening. It appears from their
14 presence today and their comments to your Honor today their
15 position still has not changed that they need either further
16 clarification from CIMC or clarification from your Honor.

17 I would suggest --

18 THE COURT: No, I don't understand that. My
19 understanding from Deutsche Bank, and we'll hear from their
20 counsel in a minute, was that there were relationships of some
21 sort between these various accounts and the judgment debtors
22 that prompted them in an excess of caution to restrain all
23 these accounts. They did not suggest, and I would be very
24 surprised if they were suggesting that we restrained other
25 accounts even though we had no reason whatsoever to believe

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1 that there was any connection whatsoever between them and the
2 judgment debtor. And if they were doing that, presumably you
3 would be busy suing them.

4 What I understood them to be saying was that based on
5 the knowledge that they did have, there was something, some
6 sort of connection that led them in a quote, excess of caution,
7 closed quote, to restrain these accounts. So it would need,
8 before I could rule, to extent that I were going to make a
9 determination of whether to lift these restraints or not, I
10 would need to know from Deutsche Bank what those relationships
11 are. But if you have presented to Deutsche Bank the same
12 affidavit you presented to me, and they have said that's not
13 enough, it must be because there's something else that they
14 know of that shows some interrelationship. Yes?

15 MR. ASHBY: That is not the case, as I understand the
16 facts today, your Honor. We have told Deutsche Bank previous
17 to the filing of our affidavit that these entities and these
18 specific accounts that we know are being restrained do not have
19 any relationship to Black Gold, BDL or SDL. The concern that
20 we were told by Deutsche Bank is that because these were also
21 Schahin group entities that they were concerned that CIMC might
22 be attempting to restrain these accounts as well.

23 So far today I haven't heard anybody step forward with
24 evidence suggesting that these accounts held by these third
25 parties have any relationship to BDL, SDL or Black Gold,

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1 because no one can suggest that. They have different project
2 entities. That's why we're asking for clarification.

3 THE COURT: I get your point. Let me hear from
4 Deutsche Bank's counsel again and we'll come back to you on
5 that.

6 So given what you just heard, and given what you
7 apparently were shown on Friday, what's the basis for
8 restraining these accounts?

9 MR. CHRISTENSEN: Well, first of all, your Honor, when
10 we heard last Friday, we then waited until Sunday to see Sunday
11 evening what Mr. Schulman's response was. I think it's fair to
12 say that Mr. Schulman's response has not contradicted the sworn
13 affidavit that Mr. Ashby put in.

14 We were also -- frankly, your Honor, we did not
15 realize this would hit a road bump as early as it did. We were
16 aware from reports of the various counsel that when you heard
17 argument before the parties on I believe it was April 17 that
18 you were going to rule by the end of this month, we thought
19 that ruling would give greater clarity, too. So we were
20 proceeding, as I said earlier, to learn from the exchanges of
21 the parties to glean what information we could.

22 We obviously have some information, but as I said,
23 Deutsche Bank Trust Company America is not the same as Deutsche
24 Bank Brazil. We're muddling through this as best we can in the
25 short time frame, and frankly, have learned a lot from the

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1 exchange of the parties. And I think Mr. Ashby has made an
2 important point in terms of the affidavit that was submitted on
3 Friday, as to my knowledge, not yet contradicted. I didn't
4 know whether Mr. Schulman would be submitting a submission on
5 Sunday evening, because as your law clerk said he was given
6 until today to argue it. So we're gleaning from that -- we
7 also frankly wanted to wait until your Honor, and we thought
8 the parties would wait until your Honor clarified the situation
9 ruling you promised by April 30, and that obviously hasn't
10 happened.

11 THE COURT: So here's where I come out. First of all,
12 this has been helpful to the Court to clarify some of my own
13 thinking on this subject, but not so far -- not as relates to
14 my ruling of tomorrow, just really as it explains what's been
15 going on.

16 I'm not going to either order Deutsche Bank lift the
17 restraints on any given entity, nor am I going to prevent them
18 from lifting the restraints if they choose to do so. I think
19 Mr. Schulman correctly points out that I don't have that
20 knowledge. But I will issue my order tomorrow, and then it
21 seems to me that the parties ought to be able, among
22 themselves, to determine reasonably what should be restrained
23 and what should not be restrained. But if you can't, then you
24 can so notify me on Wednesday, Thursday or Friday, and we will
25 have another hearing on Monday at 10:00 a.m. I can't imagine

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1 what would be more fun for the Court than having you all back
2 here, so that door is open, but perhaps it will not prove
3 necessary.

4 So I am going to leave it at this point to reiterate
5 as still a matter for Deutsche Bank to determine on its own.
6 I'm not going to require it to lift the restraints, I'm not
7 going to prevent it from lifting the restraints. I'm talking
8 about the restraints, obviously, other than the judgment debtor
9 accounts themselves. But I appreciate that in theory this may
10 impact tomorrow's Waterfall. I keep trying to visualize all
11 the magnificent waterfalls in Brazil, but on the other hand
12 this is essentially a maritime case, not in legal terms, but in
13 terms of underlying operations, so "waterfall" seems a very
14 unlikely analogy.

15 But in any event, I'm not convinced that the world
16 will come to an end in terms of the underlying operations if
17 Deutsche Bank does continue the restraints past tomorrow, but
18 I'm not convinced that they don't have a basis in their own
19 analysis to take a different position if they so choose. I
20 can't rule on that one way or the other on the basis of this
21 record. So the nice thing about Deutsche Bank's position is
22 that it's on the hot seat and it can't get off it, at least not
23 without help from this Court, and I'm not giving you any, so
24 there you are.

25 All right. So I'll issue my order tomorrow. If

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1 anyone feels there are still disputes regarding any aspect of
2 this, just call my chambers any day through Friday, and I will
3 hear you on Monday at 10:00 a.m.

4 Thanks very much.

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